

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF FIELDS
PRODUCTS, INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 89-21

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal of a \$400 civil penalty for the violation of opacity limitations listed in respondent agency's Regulation I, Section 9, came on for hearing in the Smith Tower Building in Seattle, Washington, on May 16, 1989, before the Pollution Control Hearings Board; Wick Dufford and Harold S. Zimmerman, presiding. The respondent agency elected a formal hearing, pursuant to RCW 43.21B.230.

Appellant Fields Products, Inc., was represented by its General Manager John Fields. Keith McGoffin, attorney at law, represented the

1 respondent, Puget Sound Air Pollution Control Agency (PSAPCA). The
2 proceedings were recorded by Cheri L. Davidson of Gene Barker and
3 Associates.

4 Witnesses were sworn and testified. Exhibits were admitted and
5 examined. Argument was heard. From the testimony, evidence and
6 contentions of the parties, the Board makes these

7 FINDINGS OF FACT

8 On October 26, 1988, at 9:07 a.m. air pollution Inspector Larry
9 C. Vaughn was on a routine patrol in the Tide Flats of Tacoma, a
10 non-attainment area so far as meeting National Ambient Air Quality
11 Standards for Particulate Matter, based on public health.

12 Inspector Vaughn observed a white plume emanating from the HEAF
13 (High Efficiency Air Filter) stack at Fields Products, an asphalt
14 roofing plant at 2240 Taylor Way, Tacoma Way, Tacoma, Washington.

15 II

16 Mr. Vaughn is a veteran air pollution control inspector, who has
17 been involved in making visual opacity readings over virtually his
18 entire career. In the last 17 years he has been examined and
19 certified as a plume reader 46 times by authorities in this state and
20 in California. To read the opacity of the plume here, Vaughn parked
21 off Alexander Avenue, walked about 800 feet west, and took opacity
22 readings for 12 minutes between 9:14 a.m. and 9:26 a.m. and recorded
23 them, as ranging from 40 to 55%. The sky was overcast, with
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(2)

1 practically no wind; the plume was rising vertically, and the hills
2 provided a contrasting background. He took photographs from the
3 location of his observations.

4 III

5 Inspector Vaughn drove to the plant, arriving at 9:45 a.m. and
6 contacted Mike Majock, Production Manager, and John Zajic, Plant
7 Superintendent. By then the emissions had stopped.

8 The inspector advised that Notice of Violation No. 24922 would be
9 mailed to Fields Products because the visible emissions exceeded
10 allowable limits of Regulation I, Section 9.03.

11 Subsequently, on December 13, 1988, a civil penalty of \$400 was
12 issued in connection with the incident.

13 IV

14 The process at Fields' Products involves saturating moist felt
15 with hot asphalt. Emissions from this operation are controlled by the
16 HEAF unit, which consists of a fiber filter mat which traps
17 particulates and a de-mister.

18 V

19 On the date in question, the plant was in a start-up mode. The
20 HEAF unit was operating. Plant personnel were unaware of any emission
21 control problems at the plant that day. After Vaughn's arrival, no
22 further opacity problems were observed either by the company or by
23 PSAPCA.
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VI

In normal operation, the fiber filter mat associated with the HEAF unit moves slowly and automatically, on a drum. It can, however, be moved ahead manually. Inspector Vaughn theorized that, in this case, unusual emissions were experienced at start-up, until the mat was advanced manually. This hypothesis was, however, contested by the company and unproven by PSAPCA.

VII

John Fields, General Manager of Fields Products, and founder of the company, testified that emission control improvements were made to the plant in early 1988 in an attempt to insure compliance with applicable air pollution control requirements. The HEAF unit in place cost about \$25,000.

VIII

On November 2, 1988, Fields Products had a "Source Emission Evaluation" conducted by a professional testing firm, with a PSAPCA engineer observing. The purpose of the test was to quantify particulate emissions from the felt roofing saturator after passing through the emission control equipment. Each of two test runs produced the same total particulate emission concentration: 0.006 grains per dry standard cubic foot (gr/dcsf). PSAPCA's relevant emission limit for particulate matter is 0.05 gr/dcsf. (Regulation I, Section 9.09(a)).

IX

Mr. Fields conjectured that the opacity readings Vaughn made were of steam emissions. He explained that when the hot asphalt comes into contact with moisture in the felt, steam can be produced. He speculated that the plume might have resulted from contact with a wetter than normal portion of felt. This hypothesis, like PSAPCA's was unproven.

X

Mr. Fields expressed considerable frustration at what he feels has been the unwillingness of the agency to work cooperatively with his company in resolving problems. He would like to see a better relationship with PSAPCA develop, but thinks that the agency is not interested.

XI

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such.

From these Findings of Fact, the Board comes to these

CONCLUSIONS OF LAW

I

The Board has jurisdiction over the issues and the parties. Chapters 43.21B RCW, 70.94 RCW (State Clean Air Act).

II

PSAPCA Regulation I, Section 9.03(a) prohibits emissions with an

1 opacity equal to or exceeding 20% for a period aggregating three
2 minutes in any one hour.

3 We conclude this standard was exceeded by emissions from
4 appellant's plant on October 26, 1988.

5 III

6 Under Regulation I, Section 9.03(c) the opacity standard does not
7 apply "when the presence of uncombined water is the only reason for
8 the failure of the emission to meet the requirements of this
9 section". This formulation has been interpreted to require a showing
10 that water vapor observed must be free of all particulate
11 contaminants. Chemithon Corp. v. PSAPCA, 31 Wn.App 276, 640 P.2d 1085
12 (1982). No such showing was made here. Indeed, the evidence of the
13 source test (provided by appellant) is that some particulate material
14 (albeit a very low level) is in the emissions from the plant even with
15 advanced control equipment in place. Compliance with the emission
16 standard for particulate does not excuse opacity violations.
17 Chemithon, at 278.

18 IV

19 RCW 70.94.431 authorizes the imposition of penalties on a strict
20 liability basis for violation of any regulations adopted under the
21 State Clean Air Act. Therefore, for purposes of liability, it is
22 enough for the agency to show that a standard was exceeded. That the
23

1 precise cause is unknown is irrelevant to whether such an exceedence
2 is a violation.

3 However, the surrounding facts and circumstances are relevant to
4 what the amount of the penalty should be. See, e.g., Puget Chemco v.
5 PSAPCA, PCHB No. 84-245 (1985).

6
7 V

8 The principal aim of civil penalties is to deter violations and
9 to secure compliance.

10 On this record, the appellant has shown it is making considerably
11 more than a token effort at compliance. The source test shows that
12 particulate emissions are well within the relevant standard. The
13 opacity standard, though valid, is not intended to regulate steam.
14 Therefore, what emerges is a technical violation, not a problem which
15 presents a serious demonstrated threat of injury. No proof was made
16 of a pattern of violations. No attempt was made to show that
17 appellant's control system is inadequate. The incident in question
18 appears to be an anomaly.

19 VI

20 Under RCW 70.94.431(3), the maximum penalty per day for violating
21 an opacity standard is \$400. Here PSAPCA has assessed the maximum.
22 Under all the facts and circumstances, we conclude that the Order set
23 forth below is appropriate.

VII

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

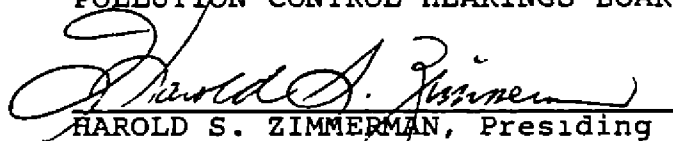
From these Conclusions of Law, the Board enters this

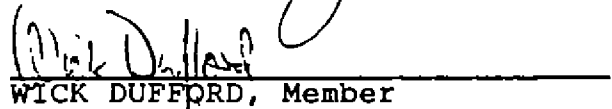
ORDER

Notice and Order of Civil Penalty No. 6911 issued by PSAPCA to Fields Company is AFFIRMED, however the monetary fine is suspended on condition that the appellant not violate respondent's opacity standard for a period of one year from the date this order is entered.

DONE this 14th day of July, 1989.

POLLUTION CONTROL HEARINGS BOARD


HAROLD S. ZIMMERMAN, Presiding


WICK DUFFORD, Member